IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 26 of 1993
WITH
WEALTH TAX REFERENCE No 46 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF WEALTH TAX

Versus

RAMESHCHANDRA KESHAVLAL

Appearance:

1. WEALTH TAX REFERENCE No. 26 of 1993
MRS M.M.BHATT FOR MR MANISH R BHATT for Applicant
NOTICE SERVED BY DS for Respondent No. 1

2. WEALTH TAX REFERENCE No. 46 of 1993
MRS M.M.BHATT MR MANISH R BHATT for Applicant.
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 22/12/2004

COMMON JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following questions for the opinion of this Court under Section 27(1) of the Wealth Tax Act,1957 (the Act), at the instance of Commissioner of Wealth Tax, Rajkot.

WEALTH TAX REFERENCE No. 26 OF 1993

"Whether in law and on facts, the Appellate Tribunal was right in confirming the view taken by the Commissioner of Wealth-tax (Appeals) that reopening of the assessment under section 17(1)(b) of the Wealth-tax for assessment years 1982-83 & 1983-84 was not justified ?"

WEALTH TAX REFERENCE No. 46 OF 1993

"Whether, the Appellate Tribunal is right in law and on facts in cancelling the assessment order under section 16(3)/17(1)(b) of the Wealth-tax Act ?"

2 As there was no appearance on behalf of the respondent the Court had directed issuance of a fresh notice vide orders dated 22/01/2004 and 02/12/2004. In pursuance of the second order the respondent has filed written submissions dated 14/12/2004 which have been placed on record, and a copy has been furnished to the learned Standing Counsel Mrs.M.M.Bhatt. Heard Mrs.Bhatt. For the reasons stated hereinafter the References are returned unanswered leaving the Tribunal to decide the controversy between the parties in light of the following facts.

3 The assessee is a co-owner along with other persons in respect of certain immovable properties. The Wealth Tax Officer made regular assessments under Section 16(3) of the Act on 28/02/1984 and 20/02/1984 respectively in respect of the assessment years 1982-83 and 1983-84. The said assessments came to be reopened admittedly on the basis of valuation report of the Departmental Valuation Officer (DVO) obtained in assessment proceedings of the co-owners of the immovable properties. The said reassessments were challenged in appeal and the CWT (Appeals) allowed the appeals holding

that the reassessments were based on the report of the DVO obtained in the case of co-owners, especially when the said report was obtained much after the finalization of the assessments made in case of the assessee. The Tribunal confirmed the view of the CWT (Appeals).

4 In written submissions the respondent-assessee has contended that valuation of immovable properties is required to be made in accordance with Schedule-III of the Act and that the same would apply in all pending cases. It is further stated "Lastly it is humbly invited kind attention is hereby drawn to your honour that in case of in all co-owner's of the properties. The department has applied Schedule-III as per decision of CWT or The Hon'ble Tribunal and the same have accepted by the department and rectified the W.T.assessment order accordingly by applying principals of Schedule-III".

5 In light of the aforesaid submissions, in a case where the assessments were reopened on the basis of the valuation report obtained in case of a co-owner, if the revenue has assessed the co-owner in relation to the same immovable properties in a different manner i.e. by applying provisions of Schedule-III of the Act, there is no reason why the respondent-assessee herein, who is admittedly co-owner of the said immovable properties, should be treated on a different footing.

6 In the circumstances, the question is left unanswered and Tribunal is directed to verify after obtaining necessary evidence on record or directing the authorities to undertake that exercise and assess the wealth tax of the respondent-assessee on the same basis as the co-owner has been assessed for the assessment years under consideration. It is made clear that in the peculiar facts and circumstances of the case the Court has not entered into the larger controversy raised by the questions referred and the same are left unanswered.

6 The References stand disposed of accordingly. There shall be no order as to costs.

(D.A.Mehta, J)

(H.N.Devani, J)

m.m.bhatt